

1 WILLIAM McGRANE (057761)
CHRISTOPHER D. SULLIVAN (148083)
2 TREPTEL MCGRANE GREENFIELD LLP
150 California Street, 22nd Floor
San Francisco, California 94111
3 Telephone: (415) 283-1776
Email: wmcgrane@tmcglaw.com
4 csullivan@tmcglaw.com

5 Special Litigation Counsel for Heller Ehrman LLP, by
and through Michael Burkart, Plan Administrator
6

7 JEFFREY T. MAKOFF (120004)
ELLEN RUTH FENICHEL (172142)
VALLE MAKOFF LLP
8 388 Market Street, Suite 1580
San Francisco, California 94111
9 Telephone: (415) 986-8001
Email: jmakoff@vallemakoff.com
10 efenichel@vallemakoff.com

11 Co-Special Litigation Counsel for Heller Ehrman LLP, by
and through Michael Burkart, Plan Administrator
12

13 UNITED STATES BANKRUPTCY COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 In re:
16 HELLER EHRMAN LLP,
Liquidating Debtor.
17 HELLER EHRMAN LLP, LIQUIDATING DEBTOR
18 Plaintiff,
19 v.
20 HOWREY, LLP,
21 Defendant.

Case No. 08-32514 DM
Chapter 11

Adv. Proc. No.

**COMPLAINT FOR AVOIDANCE OF
FRAUDULENT TRANSFERS**
[11 U.S.C. §§ 544, 548, 550; CAL. CIVIL CODE
§§ 3439.04, 3439.05, 3439.07]

1 Comes now Liquidating Debtor Heller Ehrman LLP, by and through Michael
2 Burkart, in his capacity as the duly appointed plan administrator under the Plan of
3 Liquidation confirmed in the case, and alleges as follows:

4 **THE PARTIES**

5 1. Liquidating Debtor Heller Ehrman, LLP (“Debtor” or “Plaintiff”) is a
6 limited liability partnership which commenced its Chapter 11 case on December 28,
7 2008.

8 2. On August 9, 2010, Debtor and the Official Committee of Unsecured
9 Creditors filed in this Court the Joint Plan of Liquidation of Heller Ehrman LLP (“Plan”).
10 On August 16, 2010, this Court entered its order confirming the Plan, which order
11 became effective on September 1, 2010.

12 3. Michael Burkart (“Burkart”) is the duly appointed administrator under the
13 Plan (“Plan Administrator”).

14 4. Defendant Howrey (“Howrey”) is a limited liability partnership.

15 **JURISDICTION AND VENUE**

16 5. The Bankruptcy Court has jurisdiction over this adversary proceeding
17 pursuant to 28 U.S.C. §§157 and 1334.

18 6. This action is commenced pursuant to 11 United States Code sections 541
19 through 550 and in accordance with the Federal Rules of Bankruptcy Procedures, Rules
20 3007 and 7001.

21 7. This is a core proceeding under 28 U.S.C. §157(b)(2), such that the
22 Bankruptcy Court has jurisdiction to hear and to determine this proceeding and to enter
23 an appropriate order and judgment.

24 8. Venue in the Bankruptcy Court is proper pursuant to 28 U.S.C. §1409, as

1 the Debtor's bankruptcy case is pending in this judicial district.

2 **BACKGROUND**

3 9. Prior to its dissolution, Debtor had been a prominent international law firm
4 with approximately 700 lawyers and many office locations, including California, New
5 York, Washington, the United Kingdom and the Far East.

6 10. Plaintiff is informed and believes, and thereon alleges, that Debtor was
7 organized as a limited liability partnership under the California Revised Uniform
8 Partnership Act (RUPA [Cal. Corp. Code § 16100 *et seq.*]) pursuant to the terms of a
9 certain Partnership Agreement dated as of January 1, 1994, as amended ("Partnership
10 Agreement").

11 11. Pursuant to ¶2.2 of the Partnership Agreement, the purpose of the Debtor was
12 to engage in the practice of law.

13 12. Five professional corporations originally served as the Debtor's partners:
14 Heller Ehrman (California), a professional corporation; Heller Ehrman (Washington) P.S.;
15 Heller Ehrman White & McAuliffe (Oregon) P.C.; Heller Ehrman (Alaska) P.C; and
16 William R. Mackey, a California Professional Corporation. Via subsequent amendments to
17 the Partnership Agreement, certain additional professional corporations were admitted as
18 partners to the partnership, to wit Heller Ehrman, P.C., a District of Columbia Professional
19 Corporation; Richard L. Cassin, P.A., a Florida professional Corporation; and Heller
20 Ehrman (New York), a professional corporation (collectively, with the original partners, the
21 "Heller PCs").

22 13. Each of the Heller PCs in turn had shareholders. These shareholders were
23 required, pursuant to the terms of certain Shareholders Agreements, to be eligible and
24

1 admitted to practice law in one or more jurisdictions where Debtor practiced law (“PC
2 Shareholders”).

3 CHARGING ALLEGATIONS

4 14. At a meeting of all PC Shareholders conducted on September 26, 2008, PC
5 Shareholders holding more than 2/3 of the required number of votes elected to dissolve the
6 Debtor. In connection therewith, the PC Shareholders also voted to approve a specific,
7 written dissolution plan (“Dissolution Plan”).

8 15. Prior to adopting the Dissolution Plan, both the Heller PCs and the PC
9 Shareholders had always previously agreed with Debtor that, *inter alia*, neither of them had
10 any interest in any profits or benefits derived or arising from the completion of any
11 unfinished business of the Debtor (“Unfinished Business”) that might happen to exist as of
12 the time that any scheme of dissolution affecting Debtor were to be adopted by PC
13 Shareholders. (See, e.g., ¶3.5(a) of the Partnership Agreement.)

14 16. Prior to and following the adoption of the Dissolution Plan, both the Heller
15 PCs and the PC Shareholders were subject to Section 16404 of RUPA, which provides that
16 a partner has a duty “[t]o account to [Debtor] and hold as trustee for [Debtor] any property,
17 profit, or benefit derived by the partner in the conduct and winding up of the partnership
18 business or derived from a use by the partner of partnership property or information,
19 including the appropriation of a partnership opportunity.” Cal. Corp. Code § 16404(b)(1)
20 (2010).

21 17. Prior to and following the adoption of the Dissolution Plan, both the Heller
22 PCs and the PC Shareholders were subject to Section 16401 of RUPA, which provides that
23 partners are “not entitled to remuneration for services performed for the partnership, except
24 for reasonable compensation for services rendered in winding up the business of the
partnership.” Cal. Corp. Code § 16401(h) (2007).

1 18. Article VI.F of the Dissolution Plan, however, provided that—to the complete
2 exclusion of both Debtor and Heller PCs—all of Debtor’s property rights in Unfinished
3 Business were to be initially transferred to, *inter alia*, any entities engaged in the practice of
4 law which might chose to allow PC Shareholders to move their law practices to such
5 entities (“Jewel Waiver”).

6 19. The Jewel Waiver stated:

7 As the firm is no longer in a position to continue to service its clients
8 efficiently and as an inducement to encourage Shareholders to move their
9 clients to other law firms and to move Associates and Staff with them, the
10 effect of which will be to reduce expenses to the Firm-in-Dissolution, and to
11 assure that client matters are attended to in the most efficient and effective
12 manner possible, and to help ensure collection of existing accounts receivable
13 and unbilled time with respect to such clients, the Firm-in-Dissolution will
14 waive any rights and claims under the doctrine of *Jewel v. Boxer*, 156 Cal.
App. 3d 171 (1984) to seek payment of legal fees generated after the
departure date of any lawyer or group of lawyers with respect to non-
contingency/non-success fee matters only and the Dissolution Committee is
authorized to provide appropriate assurances to law firms that Shareholders
may choose to join regarding this issue ...

15 20. The Jewel Waiver was not contingent upon receipt of any payment or other
16 consideration.

17 21. No payment or other consideration was ever given Debtor by anyone in
18 exchange for the Jewel Waiver.

19 **FIRST CLAIM FOR RELIEF**

20 **(To Avoid and Recover Intentional Fraudulent Transfers –**

21 **11 U.S.C. §§ 548(a)(1)(A) and 550)**

22 22. Plaintiff incorporates paragraphs 1-21 as if fully set forth herein.

23 23. The Jewel Waiver constituted one or more transfers of an interest in property
24 of the Debtor. Prior to the adoption of the Dissolution Plan, Debtor had an exclusive

1 property interest in all profits and/or benefits derived or arising from the completion of any
2 Unfinished Business existing at the time of the adoption of the Dissolution Plan.

3 24. Defendant was the entity for whose benefit the transfers were made and/or the
4 immediate or mediate transferee of the initial transferees of such transfers.

5 25. Howrey allowed a certain PC Shareholder, to wit Kevin Burke and Paul
6 Alexander, to move their law practices to Howrey (“Howrey Heller Hires”).

7 26. By its own express terms, and following Howrey’s making Heller Hires, the
8 Jewel Waiver initially transferred certain Unfinished Business, including, but not limited to,
9 those "non-contingency/non-success" matters listed in Attachment A to the Complaint, to
10 Howrey (“Howrey Captured Unfinished Business”), which initial transfer of Howrey
11 Captured Unfinished Business occurred within two years prior to the Petition Date of
12 December 28, 2008.¹

13 27. The Jewel Waiver was not granted in exchange for anything of value from
14 Howrey because no provision of the Dissolution Plan conditioned anyone’s right to enjoy
15 the benefits of the Jewel Waiver in exchange for the payment of any consideration of any
16 kind to the Debtor.

17 28. Debtor received no value or less than a reasonably equivalent value in
18 exchange for the Jewel Waiver.

19 29. Debtor entered into the Jewel Waiver with actual intent to hinder, delay, or
20 defraud one or more entities to which Debtor was indebted or became indebted on or after
21 the date of such transfers.

22

23

24 ¹ The Unfinished Business matters listed in Attachment A are identified using the matter numbers used by the Debtor
prior to the transfer of these matters to Defendant. The Jewel Waiver, by its own terms, applied only to “non-
contingency/non-success” matters. By listing a matter number in Attachment A, Burkart is not conceding that the
matter falls within this definition, or that the Jewel Waiver applies to it.

1 30. Plaintiff is informed and believes and based thereon alleges that, to the extent
2 the Debtor did receive consideration of any kind from Howrey, or anyone else, in exchange
3 for the Jewel Waiver, the value of such consideration did not have a value that was
4 reasonably equivalent to the value of the Howrey Captured Unfinished Business initially
5 transferred by virtue of the Jewel Waiver to Howrey.

6 31. At the time of the Jewel Waiver, the Debtor was insolvent or became
7 insolvent as a result of the loss of the value of the Howrey Captured Unfinished Business
8 initially transferred by virtue of Jewel Waiver to Howrey.

9 32. At the time of the Jewel Waiver, the Debtor was engaged in business or a
10 transaction, or was about to engage in business or a transaction, for which the property
11 remaining with Debtor following its loss of the value of the Howrey Captured Unfinished
12 Business initially transferred by virtue of Jewel Waiver to Howrey, was an unreasonably
13 small capital.

14 33. At the time of the loss of the value of the Howrey Captured Unfinished
15 Business initially transferred by virtue of the Jewel Waiver to Howrey, the Debtor intended
16 to incur, or believed that it would incur, debts that would be beyond its ability to pay as
17 such debts matured.

18 34. Plaintiff may avoid the initial transfer of the Howrey Captured Unfinished
19 Business initially transferred by virtue of the Jewel Waiver to Howrey under Section
20 548(a)(1)(A) and recover the value of the Howrey Captured Unfinished Business initially
21 transferred by virtue of the Jewel Waiver to Howrey pursuant to Section 550.

22 //

23 //

24 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

3
4
5
6
7
8
9
10
11
12
13
14

7
8
9
0
1
2
3
4

9
20
21
22
23
24

2
3
4

1 to incur, or believed that it would incur, debts that would be beyond its ability to pay as
2 such debts matured.

3 43. Plaintiff may avoid the initial transfer of the Howrey Captured Unfinished
4 Business initially transferred by virtue of the Jewel Waiver to Howrey under Section
5 548(a)(1)(B) and recover the value of the Howrey Captured Unfinished Business initially
6 transferred by virtue of the Jewel Waiver to Howrey pursuant to Section 550.

7 **THIRD CLAIM FOR RELIEF**

8 **(To Avoid and Recover Actual and Constructive Fraudulent Transfers –**
9 **Cal. Civ. Code §§ 3439.04 and 3439.07 and 11 U.S.C. §§ 544, 550)**

10 44. Plaintiff incorporates paragraphs 1-43 as if fully set forth herein.

11 45. Plaintiff is informed and believes, and thereon alleges, that there is a creditor
12 that holds an unsecured claim that is allowable under Section 502 of the Bankruptcy Code.

13 46. The Jewel Waiver constituted one or more transfers of an interest in property
14 of the Debtor. Prior to the adoption of the Dissolution Plan, Debtor had an exclusive
15 property interest in all profits and/or benefits derived or arising from the completion of any
16 Unfinished Business existing at the time of the adoption of the Dissolution Plan.

17 47. Defendant was the entity for whose benefit the transfers were made and/or the
18 immediate or mediate transferee of the initial transferees of such transfers.

19 48. By its own express terms, and following Howrey's making Heller Hires, the
20 Jewel Waiver initially transferred Howrey Captured Unfinished Business, which initial
21 transfer of Howrey Captured Unfinished Business occurred within four years prior to the
22 Petition Date of December 28, 2008.

23 49. The Jewel Waiver was not granted in exchange for anything of value from
24 Howrey because no provision of the Dissolution Plan conditioned anyone's right to enjoy

1 the benefits of the Jewel Waiver in exchange for the payment of any consideration of any
2 kind to the Debtor.

3 50. Debtor received no value or less than a reasonably equivalent value in
4 exchange for the Jewel Waiver.

5 51. Debtor entered into the Jewel Waiver with actual intent to hinder, delay, or
6 defraud one or more creditors of Debtor.

7 52. Plaintiff is informed and believes and based thereon alleges that, to the extent
8 the Debtor did receive consideration of any kind from Howrey, or anyone else, in exchange
9 for the Jewel Waiver, the value of such consideration did not have a value that was
10 reasonably equivalent to the value of the Howrey Captured Unfinished Business initially
11 transferred by virtue of the Jewel Waiver to Howrey.

12 53. At the time of the Jewel Waiver, the Debtor was insolvent or became
13 insolvent as a result of the loss of the value of the Howrey Captured Unfinished Business
14 initially transferred by virtue of Jewel Waiver to Howrey.

15 54. At the time of the Jewel Waiver, the Debtor was engaged in business or a
16 transaction, or was about to engage in business or a transaction, for which the property
17 remaining with Debtor following its loss of the value of the Howrey Captured Unfinished
18 Business initially transferred by virtue of Jewel Waiver to Howrey, was an unreasonably
19 small capital.

20 55. At the time of the loss of the value of the Howrey Captured Unfinished
21 Business initially transferred by virtue of the Jewel Waiver to Howrey, the Debtor intended
22 to incur, or believed that it would incur, debts that would be beyond its ability to pay as
23 such debts matured.

24

1 56. Plaintiff may avoid the initial transfer of the Howrey Captured Unfinished
2 Business initially transferred by virtue of the Jewel Waiver to Howrey under California
3 Civil Code Sections 3439.04, 3439.07, and Bankruptcy Code Section 544 and recover the
4 value of the Howrey Captured Unfinished Business initially transferred by virtue of the
5 Jewel Waiver to Howrey pursuant to Section 550.

FOURTH CLAIM FOR RELIEF

(To Avoid and Recover Constructive Fraudulent Transfers –

Cal. Civ. Code § 3439.05 and 3439.07 and 11 U.S.C. §§ 544, 550)

9 57. Plaintiff incorporates paragraphs 1-56 as if fully set forth herein.

10 58. Plaintiff is informed and believes, and thereon alleges, that there is a creditor
11 that holds an unsecured claim arising on or before the Petition Date that is allowable under
12 Section 502 of the Bankruptcy Code.

13 59. The Jewel Waiver constituted one or more transfers of an interest in property
14 of the Debtor. Prior to the adoption of the Dissolution Plan, Debtor had an exclusive
15 property interest in all profits and/or benefits derived or arising from the completion of any
16 Unfinished Business existing at the time of the adoption of the Dissolution Plan.

17 60. Defendant was the entity for whose benefit the transfers were made and/or the
18 immediate or mediate transferee of the initial transferees of such transfers.

19 61. By its own express terms, and following Howrey's making Heller Hires, the
20 Jewel Waiver initially transferred Howrey Captured Unfinished Business, which initial
21 transfer of Howrey Captured Unfinished Business occurred within four years prior to the
22 Petition Date of December 28, 2008.

23 62. The Jewel Waiver was not granted in exchange for anything of value from
24 Howrey because no provision of the Dissolution Plan conditioned anyone's right to enjoy

1 the benefits of the Jewel Waiver in exchange for the payment of any consideration of any
2 kind to the Debtor.

3 63. Debtor received no value or less than a reasonably equivalent value in
4 exchange for the Jewel Waiver.

5 64. Plaintiff is informed and believes and based thereon alleges that, to the extent
6 the Debtor did receive consideration of any kind from Howrey, or anyone else, in exchange
7 for the Jewel Waiver, the value of such consideration did not have a value that was
8 reasonably equivalent to the value of the Howrey Captured Unfinished Business initially
9 transferred by virtue of the Jewel Waiver to Howrey.

10 65. At the time of the Jewel Waiver, the Debtor was insolvent or became
11 insolvent as a result of the loss of the value of the Howrey Captured Unfinished Business
12 initially transferred by virtue of Jewel Waiver to Howrey.

13 66. Plaintiff may avoid the initial transfer of the Howrey Captured Unfinished
14 Business initially transferred by virtue of the Jewel Waiver to Howrey under California
15 Civil Code Sections 3439.05, 3439.07, and Bankruptcy Code Section 544 and recover the
16 value of the Howrey Captured Unfinished Business initially transferred by virtue of the
17 Jewel Waiver to Howrey pursuant to Section 550.

18 WHEREFORE, Plaintiff prays that this Court enter judgment against Defendant as
19 follows:

20 **PRAYER FOR RELIEF**

21 1. Avoid the Jewel Waiver as constituting one or more fraudulent transfers
22 pursuant to 11 U.S.C. Sections 548 and 550, as well as California Civil Code Sections
23 3439.04, 3439.05, 3439.07 and 11 U.S.C. Section 544, and order the return of such
24 transfers or the value thereof;

- 1 2. Require payment of any and all pre-judgment and post-judgment interest at
2 the highest rate allowed by applicable law;
3 3. Require payment of attorneys' fees, expenses and costs; and
4 4. Grant such other and further relief deemed appropriate under the
5 circumstances.

6
7 Dated: December 1, 2010

TREPEL, McGRANE GREENFIELD LLP

8
9 By: /s/ Christopher D. Sullivan _____
Christopher D. Sullivan

10 Special Litigation Counsel for Liquidating
11 Debtor, Heller Ehrman LLP
12
13
14
15
16
17
18
19
20
21
22
23
24